

§ 851.43

10 CFR Ch. III (1–1–11 Edition)

basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation (PNOV) to the contractor.

(b) A PNOV must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular requirement involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The obligation of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the PNOV.

(c) A reply to a PNOV must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments that support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities that support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(d) If a contractor fails to submit a written reply within 30 calendar days of receipt of a PNOV:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

(e) A copy of the PNOV must be prominently posted, once final, at or near the location where the violation occurred until the violation is corrected.

§ 851.43 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation (PNOV), that presents a disagreement

with any aspect of the PNOV and civil penalty, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.42:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.44 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.45 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;